

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**CYRIL B. KORTE, JANE E. KORTE,**  
and **KORTE & LUITJOHAN**  
**CONTRACTORS, INC.,**  
Plaintiffs,

v.

**CASE NO. 3:12-CV-01072-MJR-PMF**

**UNITED STATES DEPARTMENT  
OF HEALTH AND HUMAN  
SERVICES; KATHLEEN SEBELIUS,**  
in her official capacity as the Secretary of  
the United States Department of Health and  
Human Services; **UNITED STATES  
DEPARTMENT OF THE TREASURY;  
TIMOTHY F. GEITHNER,** in his official  
capacity as the Secretary of the United States  
Department of the Treasury; **UNITED  
STATES DEPARTMENT OF LABOR;**  
and **HILDA L. SOLIS,** in her official  
capacity as Secretary of the United States  
Department of Labor,

Defendants.

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**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs move this court, pursuant to Fed. R. Civ. P. 56 and SDIL-LR 7.1, for the entry of an order granting them partial summary judgment, and they state as follows:

1. Plaintiffs have raised five counts in their complaint. This motion is directed only to Count I (Religious Freedom Restoration Act) and Count II (Free Exercise Clause). Plaintiffs preserve for further proceedings all other issues and claims raised in their complaint including those that comprise Counts III, IV, and V and a determination of attorneys' fees and costs.

2. Plaintiffs rely on the more detailed reasons for granting this motion set forth in the supporting memorandum of law and accompanying declarations, which show that there are no

genuine issues of material fact in dispute and that as a matter of law Plaintiffs should be awarded summary judgment on Count I (Religious Freedom Restoration Act) and Count II (Free Exercise Clause) of their complaint.

3. Plaintiffs request that this court
  - a. enter summary judgment declaring that Defendants' regulations, requiring Plaintiffs to include in their employee health benefit plan coverage for all FDA-approved contraceptives methods, sterilization procedures, and related patient education and counseling for women with reproductive capacity, including the substantive requirement imposed in 42 U.S.C. § 300gg-13(a)(4) ("the Mandate"), violate Plaintiffs' rights as protected by the Religious Freedom Restoration Act (Count I) and by the Free Exercise Clause of the First Amendment to the United States Constitution (Count II) and
  - b. enter a permanent injunction prohibiting Defendants, their officers, agents, servants, successors in office, employees, attorneys, and those acting in concert or participation with them from applying and enforcing against Plaintiffs any regulations that require Plaintiffs to include in their employee health benefit plan coverage for all FDA-approved contraceptives methods, sterilization procedures, and related patient education and counseling for women with reproductive capacity, including the substantive requirement imposed in 42 U.S.C. § 300gg-13(a)(4) ("the Mandate"), any penalties and fines, including those found in 26 U.S.C. §§ 4980D, 4980H, and 29 U.S.C. § 1132, and any determination that the requirements are applicable to Plaintiffs.
4. A proposed order accompanies this motion.

Accordingly, for the above-stated reasons and those set forth in the supporting memorandum of law and declarations, Plaintiffs request that this court grant this motion and enter summary judgment in Plaintiffs' favor on Count I and Count II of their complaint and preserve the remaining issues and claims in their complaint for further proceedings.

Respectfully submitted on this 10th day of October, 2012.

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\*Applications for admission forthcoming

**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2012, true and correct copies of the foregoing and proposed order were caused to be sent by certified United States Mail, return receipt requested, to the following:

U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201  
Defendant  
Tracking No.: 7011-3500-0003-0896-2452

Kathleen Sebelius, Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201  
Defendant  
Tracking No.: 7011-3500-0003-0896-2407

U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220  
Defendant  
Tracking No.: 7011-3500-0003-0896-2414

Timothy Geithner, Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
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U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210  
Defendant  
Tracking No.: 7011-3500-0003-0896-2438

Hilda Solis, Secretary  
U.S. Department of Labor  
200 Constitution Ave., N.W.  
Washington, D.C. 20210  
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